

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RONALD RILEY,

Plaintiff

v.

EDWARD M. MARSICO, JR.,

Defendant

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CIVIL NO. 1:15-CV-1371

(Judge Rambo)

(Magistrate Judge Schwab)

MEMORANDUM

Ronald Riley, an inmate incarcerated at SCI-Smithfield, filed the instant complaint pursuant to 28 U.S.C. § 1983. He alleges that Edward M. Marsico, Jr., without probable cause, indicted him for violations of statutes of the Commonwealth of Pennsylvania that he alleges were either repealed or are inapplicable to him. Before the court is a July 24, 2015 report and recommendation (Doc. 6) of the magistrate judge to whom this matter is referred in which she recommends that the complaint be dismissed for failure to state a claim. Plaintiff, Ronald Riley, has filed objections to the report and recommendation (Doc. 7). For the reasons set forth in the report and recommendation and in this memorandum, the report will be adopted.

The magistrate judge initially examined the complaint pursuant to 28 U.S.C. § 1915A(b)(1). The bases for the recommendation of dismissal are two fold: (1) Defendant Marsico, as District Attorney of Dauphin County, Pennsylvania, is a prosecutor and in the duty of prosecuting is immune from civil suit for damages under § 1983; *see Imbler v. Pachtman* 424 U.S. 409, 431 (1976); and (2) is immune even if prosecution was malicious; *see Kulwicki v. Dawson*, 969 F.2d 1454, 1463-54 (ed Cir.

1992).¹ The magistrate judge also correctly opined that since Marsico is a state actor, Fifth Amendment claims do not apply to him.

In his objections to the report and recommendation, Riley reiterates the bases for his complaint. He does not respond to the magistrate judge's legal reasons and the cases cited by her in support of her recommendation. Thus the report and recommendation will be adopted. An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: August 6, 2015.

¹The magistrate judge also noted that the § 1983 claim would also fail under the favorable termination rule. (Doc. 6, p. 7, n.1.)